

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IVORY J. VALENTINE,
Petitioner,

No. C 10-1136 MHP (pr)
ORDER OF DISMISSAL

v.

Warden CURRY,
Respondent.

Ivory J. Valentine, an inmate at the Correctional Training Facility in Soledad, filed this pro se action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition borders on being incomprehensible, but it appears to challenge disciplinary decisions at the prison.

Prisoners in state custody who want to challenge either the fact or length of their confinement in federal court by a petition for a writ of habeas corpus are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every issue they seek to raise in federal court. See 28 U.S.C. § 2254(b)(1)(A),(c); Duckworth v. Serrano, 454 U.S. 1, 3 (1981). If available state remedies have not been exhausted as to all claims, the district court must dismiss the petition. See id. at 4-5. In his petition, Valentine indicated that he had not presented any of the three claims therein to the California Supreme Court. See Petition (docket # 1 at 9, 10, and 13). He has not exhausted state court remedies as he must before this court may consider his claims. The petition must be dismissed.

1 The dismissal is without prejudice to petitioner filing a new federal habeas petition
2 after he exhausts his state court remedies. Petitioner is cautioned to be diligent in pursuing
3 his state court remedies and then filing his federal habeas petition after he does so to avoid
4 problems with the one-year statute of limitations for the filing of federal habeas petitions, see
5 28 U.S.C. § 2244(d). He also is cautioned not to file an amended petition in this action and
6 not to use the case number for this action because this action is being closed today. When he
7 files a new petition, he should put no case number on the first page, and should submit the
8 petition with the \$5.00 filing fee or a completed in forma pauperis application. At that time,
9 the court will give the new petition a new case number.

10 Petitioner's in forma pauperis application is GRANTED. (Docket # 2, # 7.)

11 The clerk shall close the file.

12 IT IS SO ORDERED.

13 DATED: September 27, 2010


Marilyn Hall Patel
United States District Judge